

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TONY CHRISTOPHER GONZALES,

Plaintiff,

v.

CORONADO,

Defendant.

Case No. 1:24-cv-00406-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE, FAILURE TO
OBEY A COURT ORDER, AND FAILURE
TO STATE A CLAIM

(ECF No. 11)

FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Tony Christopher Gonzales (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On September 19, 2024, the Court screened the complaint and granted Plaintiff leave to file a first amended complaint or a notice of voluntary dismissal within thirty days. (ECF No. 11.) Plaintiff was warned that failure to comply with the Court’s order would result in dismissal of this action, with prejudice, for failure to obey a court order and failure to state a claim. (*Id.* at 7.) The order was served on Plaintiff at his current address of record at Avenal State Prison in Avenal, California. On September 27, 2024, the Court’s order was returned as “Undeliverable, Unable to Forward.”

1 The deadline for Plaintiff to respond to the Court's order has now expired, and Plaintiff
2 has not filed a notice of change of address or otherwise communicated with the Court.

3 **II. Failure to State a Claim**

4 **A. Screening Requirement**

5 The Court is required to screen complaints brought by prisoners seeking relief against a
6 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous
8 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
9 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b).

10 A complaint must contain "a short and plain statement of the claim showing that the
11 pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
12 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
14 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as
15 true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*,
16 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

17 To survive screening, Plaintiff's claims must be facially plausible, which requires
18 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
19 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*
20 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully
21 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility
22 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

23 **B. Plaintiff's Allegations**

24 Plaintiff is currently housed at Avenal State Prison in Avenal, California. Plaintiff alleges
25 that the events in the complaint occurred while he was housed at Wasco State Prison. Plaintiff
26 names A. Coronado, Correctional Counselor-1 as the sole defendant. Plaintiff alleges a "time
27 constraints" Due Process violation for failure to complete inmate processing that is stated in Title
28 15, §3075.1.

On November 9th Arrived in Wasco. (1) 60 days it took for him to look at my c-file, and process. Is still not completed because he hasn't update 128b chrono. (2) rights, (3) time constraints (due process rights (4) negligence. Pain & Suffering, Crule and Unusual Punishment. Pain & suffering for my wife, kids, family. Mental Distress. (unedited text)

Plaintiff alleges that is unable to receive his 33% after 90 days so he may go home. He is unable to receive his right to ICC. He is unable to transfer due to not completing inmate rights of processing. Plaintiff also alleges he has a 602 grievance against defendant.

As remedies, Plaintiff requests compensatory damages; release from prison; parole and to have Defendant reprimanded.

C. Discussion

Plaintiff's complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to state a cognizable claim under 42 U.S.C. § 1983.

1. Federal Rule of Civil Procedure 8

Pursuant to Rule 8, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–57; *Moss*, 572 F.3d at 969.

Here, Plaintiff's complaint is short, but is not a plain statement of his claims. Many of Plaintiff's allegations are conclusory as to what happened, when it happened and who was involved. It is unclear what constitutional right he is complaining was violated. He appears to challenge some kind of processing. Plaintiff's conclusory allegations regarding what happened, when it happened, or which defendant was involved are insufficient.

In addition, Section 1983 plainly requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by

1 Plaintiff. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362
 2 (1976). Plaintiff fails to link Defendant Coronado to any purported constitutional violation.

3 **2. Standing to Sue on Behalf of Other Plaintiffs**

4 Insofar as Plaintiff is attempting to assert claims on behalf of other individuals such as his
 5 wife or children, he may not do so. Plaintiff may only represent his own legal interests; he may
 6 not represent the legal interests of other inmates or other individuals. “A litigant appearing in
 7 propria persona has no authority to represent anyone other than himself” in a civil rights action.
 8 *Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962); see also *Weaver v. Wilcox*, 650 F.2d 22,
 9 27 (3rd Cir. 1981) (“[A]n inmate does not have standing to sue on behalf of his fellow prisoners.
 10 Rather, the prisoner must allege a personal loss and seek to vindicate a deprivation of his own
 11 constitutional rights.” (citations omitted).). “Although a non-attorney may appear in propria
 12 persona in his own behalf, that privilege is personal to him. He has no authority to appear as an
 13 attorney for others than himself.” *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir.
 14 1987) (citations omitted).

15 **3. No Right to Early Parole**

16 Plaintiff cannot maintain a due process claim, or any other claim, based on denial of early
 17 parole consideration, because he has no protected property interest in parole. There is no right
 18 under the U.S. Constitution to be conditionally released before the expiration of a valid sentence.
 19 *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011); see also *Greenholtz v. Inmates of Neb. Penal &*
 20 *Corr. Complex*, 442 U.S. 1, 7 (1979) (there is no federal constitutional right to parole). It follows
 21 that there is no constitutional right to parole consideration. See 42 U.S.C. § 1983 (only
 22 deprivation of rights secured by federal law is actionable under Section 1983); see also *Langford*
 23 *v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996) (state law issue cannot be transformed into federal
 24 law issue by merely invoking due process); *Guzman v. Cates*, No. 1:21-CV-01465 BAM PC,
 25 2022 WL 542375, at *4 (E.D. Cal. Feb. 23, 2022) (Plaintiff cannot maintain a constitutional
 26 violation based on denial of early parole consideration), report and recommendation adopted, No.
 27 1:21-CV-01465 DAD BAM PC, 2022 WL 930819 (E.D. Cal. Mar. 29, 2022).

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4. Habeas Corpus

To the extent that Plaintiff is attempting to challenge the validity of his conviction, the duration of conviction, or his incarceration, the exclusive method for asserting that challenge is by filing a petition for writ of habeas corpus. It has long been established that state prisoners cannot challenge the fact or duration of their confinement in a section 1983 action, and that their sole remedy lies in habeas corpus relief. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (“[A] prisoner in state custody cannot use a § 1983 action to challenge the fact or duration of his confinement. He must seek federal habeas corpus relief (or appropriate state relief) instead.”).

5. Title 15 and Policy Violation

To the extent that any Defendant has not complied with applicable state statutes or prison regulations, these deprivations do not support a claim under § 1983. Section 1983 only provides a cause of action for the deprivation of federally protected rights. *See, e.g., Nible v. Fink*, 828 Fed. Appx. 463 (9th Cir. 2020) (violations of Title 15 of the California Code of Regulations do not create private right of action); *Nurre v. Whitehead*, 580 F.3d 1087, 1092 (9th Cir. 2009) (section 1983 claims must be premised on violation of federal constitutional right); *Prock v. Warden*, No. 1:13-cv-01572-MJS (PC), 2013 WL 5553349, at *11–12 (E.D. Cal. Oct. 8, 2013) (noting that several district courts have found no implied private right of action under title 15 and stating that “no § 1983 claim arises for [violations of title 15] even if they occurred.”); *Parra v. Hernandez*, No. 08cv0191-H (CAB), 2009 WL 3818376, at *3 (S.D. Cal. Nov. 13, 2009) (granting motion to dismiss prisoner’s claims brought pursuant to Title 15 of the California Code of Regulations); *Chappell v. Newbarth*, No. 1:06-cv-01378-OWW-WMW (PC), 2009 WL 1211372, at *9 (E.D. Cal. May 1, 2009) (holding that there is no private right of action under Title 15 of the California Code of Regulations); *Tirado v. Santiago*, No. 1:22-CV-00724 BAM PC, 2022 WL 4586294, at *5 (E.D. Cal. Sept. 29, 2022), report and recommendation adopted, No. 1:22-CV-00724 JLT BAM PC, 2022 WL 16748838 (E.D. Cal. Nov. 7, 2022) (same).

6. No Right to Appeals Process

A prison official’s processing of an inmate’s appeals, without more, cannot serve as a basis for Section 1983 liability. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003)

(Prisoners do not have a “separate constitutional entitlement to a specific prison grievance procedure.”) (citation omitted), cert. denied, 541 U.S. 1063 (2004); *Shallowhorn v. Molina*, 572 F. App’x 545, 547 (9th Cir. 2014) (district court properly dismissed Section 1983 claims against defendants who “were only involved in the appeals process”) (citing *Ramirez*, 334 F.3d at 860); *Evans v. Cisneros*, No. 1:22-CV-01238 AWI BAM PC, 2023 WL 2696670, at *5 (E.D. Cal. Mar. 29, 2023) (no claim for failing to address appeals).

7. Reprimand of Defendant

Plaintiff seeks to have Defendant reprimanded. Plaintiff does not have the right pursuant to Section 1983 to have any person reprimanded as a remedy. Further, requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the Prison Litigation Reform Act [“PLRA”], which requires that the Court find the “relief [sought] is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” In cases brought by prisoners involving conditions of confinement, any injunction “must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2). Moreover, where, as here, “a plaintiff seeks a mandatory preliminary injunction that goes beyond maintaining the status quo pendente lite, ‘courts should be extremely cautious’ about issuing a preliminary injunction and should not grant such relief unless the facts and law clearly favor the plaintiff.” *Committee of Central American Refugees v. I.N.S.*, 795 F.2d 1434, 1441 (9th Cir. 1986), quoting *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984).

III. Failure to Prosecute and Failure to Obey a Court Order

A. Legal Standard

Plaintiff is required to keep the Court apprised of his current address at all times. Local Rule 183(b) provides:

Address Changes. A party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-

1 three (63) days thereafter of a current address, the Court may dismiss the action
2 without prejudice for failure to prosecute.

3 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to
4 prosecute.¹

5 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
6 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
7 within the inherent power of the Court.” District courts have the inherent power to control their
8 dockets and “[i]n the exercise of that power they may impose sanctions including, where
9 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
10 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
11 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
12 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
13 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
14 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
15 (dismissal for failure to comply with court order).

16 In determining whether to dismiss an action, the Court must consider several factors:
17 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
18 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
19 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
20 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

21 **B. Discussion**

22 Here, Plaintiff’s address change was due no later than December 2, 2024, and Plaintiff’s
23 response to the Court’s September 19, 2024 order is also overdue. Plaintiff has failed to comply
24 with the Court’s order or otherwise communicate with the Court. The Court cannot effectively
25 manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first
26 and second factors weigh in favor of dismissal.

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28 ¹ Courts may dismiss actions sua sponte under Rule 41(b) based on the plaintiff’s failure to prosecute. *Hells Canyon Pres. Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
2 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
3 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
4 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d
5 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
6 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
7 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Products*
8 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

9 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
10 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
11 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s September 19, 2024 order
12 expressly warned Plaintiff that his failure to comply with the Court’s order would result in
13 dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a
14 claim. (ECF No. 11, p. 7.) Thus, Plaintiff had adequate warning that dismissal could result from
15 his noncompliance.

16 Additionally, at this stage in the proceedings there is little available to the Court that
17 would constitute a satisfactory lesser sanction while protecting the Court from further
18 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this
19 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
20 likely to have no effect given that Plaintiff has ceased litigating his case and updating his address.
21 More importantly, given the Court’s apparent inability to communicate with Plaintiff, there are no
22 other reasonable alternatives available to address Plaintiff’s failure to prosecute this action and his
23 failure to apprise the Court of his current address. *In re PPA*, 460 F.3d at 1228–29; *Carey*, 856
24 F.2d at 1441.

25 **IV. Order and Recommendation**

26 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
27 District Judge to this action.

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1 Furthermore, the Court finds that dismissal is the appropriate sanction and HEREBY
2 RECOMMENDS that this action be dismissed, with prejudice, for failure to obey a Court order,
3 failure to prosecute, and for failure to state a claim.

4 These Findings and Recommendation will be submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
6 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
7 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
8 Findings and Recommendation.” **Objections, if any, shall not exceed fifteen (15) pages or**
9 **include exhibits. Exhibits may be referenced by document and page number if already in**
10 **the record before the Court. Any pages filed in excess of the 15-page limit may not be**
11 **considered.** The parties are advised that failure to file objections within the specified time may
12 result in the waiver of the “right to challenge the magistrate’s factual findings” on
13 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*,
14 923 F.2d 1391, 1394 (9th Cir. 1991)).

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16 IT IS SO ORDERED.

17 Dated: December 26, 2024

18 /s/ Barbara A. McAuliffe
19 UNITED STATES MAGISTRATE JUDGE
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